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Other Cases—Court of Claims Act

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to the General Council and its agencies from being expended for functions not authorized by their respective charters and constitutions as they existed at the date of the court's decree.

It is highly gratifying to observe that the three courts who dealt with this case realized the effect their judgment would have, not only upon the parties to the suit, but also to the entire structure of a distinguished Protestant sect. The facts of the controversy were reviewed extensively in an attempt to do justice to all the conflicting interests.

Court of Claims Act

In *Cimo v. State,*[7] claimant asked leave to file a claim for damage to her real property, occasioned by a change of grade in front of said property, in connection with a grade crossing elimination structure instituted by the defendant. She conceded that the claim was not filed within the six month period specified in the Grade Crossing Elimination Act which gave rise to her cause of action,[8] but claimed that the more general provisions of the Court of Claims Act[9] enabled her to take advantage of the discretionary two year statute of limitations contained therein.[10] The Court of Appeals, affirming the Appellate Division's reversal of the Court of Claims, held (6-1), that the claim was barred by the six month statute of limitations in the specific statute giving rise to her cause of action.[11]

The court pointed out that the claimant could advance only two arguments in her favor. The first would necessitate the finding that claims such as hers were governed by two statutes of limitation: one of six months and another of two years. It is obvious that the Legislature could not intend such duality.

The second form of reasoning is that the time limitations in the earlier, specific statute were repealed, by implication, by the general provisions of the Court of Claims Act. Repeal by implication is not favored and will be decreed only where a clear intent appears to effect that purpose.[12] The court pointed out unless

7. 306 N. Y. 143, 116 N. E. 2d 290 (1954).
8. L. 1928, Chap. 678. McK. Unconsol. Laws § 7906.
9. Court of Claims Act § 10 (4), (5).
10. *Id.* § 10 (5).
11. At Common law no such damages were recoverable. *Conklin v. New York, O. & W. R. Co.,* 102 N. Y. 109, 6 N. E. 663 (1886). *Heiser v. Mayor etc. of New York,* 104 N. Y. 68, 9 N. E. 866 (1887).
12. *City of New York v. Maltbie,* 274 N. Y. 90, 97, 8 N. E. 2d 289, 292 (1937); *Mority v. United Brethrens Church,* 269 N. Y. 125, 133, 199 N. E. 29, 31 (1935).

there is a patent inconsistency between the two, a more general statute will not reveal a more specific one.[13]

The court further pointed out that when the Grade Crossing Elimination Act became law in 1928, the Court of Claims Act then in existence had a six month statute of limitations for all claims not otherwise provided for with no discretionary extention. Later when the Court of Claims Act was liberalized by giving discretion to the court to extend the time beyond six months, no such liberality was shown to the Grade Crossing Elimination Act. Moreover, it is a general rule of law that when the legislature creates a new right of action, and in the statute of creation imposes a time limitation, that limitation is part of the grant of of power and the bringing of such action is subject to that limitation and no other.[14]

Election Law

Statutes that require an employer to give his employees time off on a general election day, so that they may exercise their franchise, are common.[15] A minority of such statutes, including the New York provisions,[16] also provide that "no deduction shall be made from the usual salary or wages of such voter." The constitutionality of these latter statutes has been questioned on several occasions in the state courts.[17] The United States Supreme Court, has recently held that they do not violate the Federal Constitution.[18]

In *Williams v. Aircooled Motors, Inc.*,[19] defendant company maintained a nine-hour day, the last hour being paid at time and a half. On election day, plaintiff worked the first seven hours and took off the last two hours of the day so that he could vote. The company paid him nine hours straight pay for election day

13. *People* ex rel. *Fleming v. Dalton*, 158 N. Y. 175, 184, 52 N. E. 1113, 1116 (1899).

14. *Gatti Paper Stock Corp. v. Erie R. R. Co.*, 247 App. Div. 45, 286 N. Y. Supp. 669 (1st Dep't 1936), *aff'd* 272 N. Y. 535, 4 N. E. 2d 724 (1936); *Meng v. Bischoff*, 227 N. Y. 264, 276; 125 N. E. 508, 511 (1919).

15. See, 47 COL. L. REV. 135 (1947).

16. ELECTION LAW § 226.

17. *People v. Chicago, M. & St. P. R. Co.*, 306 Ill. 486, 138 N. E. 155, (1923); *Illinois Central R. Co. v. Commonwealth*, 305 Ky. 632, 204 S. W. 2d 973 (1947) held such statutes are unconstitutional because of a taking of property without due process of law. The following cases have held such statutes to be constitutional: *People v. Ford Motor Co.*, 271 App. Div. 141, 63 N. Y. S. 2d 697 (3d Dep't 1946); *Ballarini, in behalf of Lodge 1327, etc. v. Schlage Lock Co.*, 100 Cal. App. 2d Supp. 859, 226 P. 2d 771 (1950); *State v. International Harvester Co.*, ___ Minn. ___, 63 N. W. 2d 547 (1954), *review denied* 23 U. S. L. Week 3098 (U. S., Oct. 19, 1954).

18. *Dray-Brite Lighting, Inc. v. State of Missouri*, 342 U. S. 421 (1952).

19. 307 N. Y. 332, 121 N. E. 2d 251 (1954).